

RESOLUTION NO. 75045

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE ADOPTING FINDINGS FOR PURPOSES OF AND PURSUANT TO THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970 IN CONNECTION WITH APPROVAL OF A COOPERATIVE AGREEMENT WITH THE SANTA CLARA VALLEY WATER DISTRICT FOR DESIGN AND CONSTRUCTION WORK ASSOCIATED WITH THE REPAIR OF ERODED BANKS AT TWO LOCATIONS ALONG THOMPSON CREEK AND AT ONE LOCATION ALONG SIERRA CREEK

WHEREAS, the City of San Jose ("City") desires to support the Santa Clara Valley Water District ("District") with design and construction work associated with the repair of eroded banks at two locations along Thompson Creek (Everdale Drive and Farnsworth Drive) and at one location along Sierra Creek (the south bank downstream of the outfall off of Sierraville Avenue), as a part of the District's implementation of the District's Stream Maintenance Program ("SMP") and intends to enter into a cooperative agreement with the District for this purpose (the "Cooperative Agreement"); and

WHEREAS, the District, as a lead agency under the California Environmental Quality Act of 1970, together with implementing guidelines promulgated thereunder, all as amended to date (collectively, "CEQA"), prepared an environmental impact report under CEQA for the SMP; and

WHEREAS, the final environmental impact report prepared for the SMP project (the "Final EIR"), as that project is more specifically described in that Final EIR (the "Project") was certified by the Board of the District on August 21, 2001; and

WHEREAS, on August 21, 2001, the Board of the District adopted its Resolution No. 2001-56 "Adoption of Certain Findings for the District's Approval of FEIR for a Stream Maintenance Program" as required by CEQA, including a mitigation monitoring and reporting program and a statement of overriding considerations, and also approved the implementation of the SMP in its Resolution No.2001-56; and

WHEREAS, prior to approving a resolution authorizing the City Manager to enter into the Cooperative Agreement with the District, the City Council, as a responsible agency under CEQA, desires to make certain findings pursuant to 14 California Code of Regulations, Sections 15091 and 15096, promulgated under CEQA in connection with Cooperative Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of San José as follows:

1. City has reviewed the information contained in the Final EIR that is relevant to its approval of a resolution authorizing the City Manager to enter into a Cooperative Agreement with the District for City support of the design and construction work associated with the repair of eroded banks at two locations along Thompson Creek (Everdale Drive and Farnsworth Drive) and at one location along Sierra Creek (the south bank downstream of the outfall off of Sierraville Avenue), as a part of the District's implementation of the District's SMP, and has reviewed the CEQA findings contained in Resolution No. 2001-56 adopted by the Board of the District for the Project, including without limitation the Mitigation Monitoring and Reporting Program and the Statement of Overriding Considerations contained therein, all as relevant to its approval of the resolution authorizing the City Manager to enter into said Cooperative Agreement, and, based thereon, as well as on any and all testimony received by the City Council at its hearing on the resolution authorizing the City Manager to enter into the Cooperative Agreement, the City Council hereby concludes all of the following:
 - a) The District has already adopted the mitigation measures recommended in the Final EIR, the District has authority to implement those mitigation measures or to seek any required approvals for those mitigation measures, and City has no direct authority to implement the mitigation measures identified in the Final EIR and Resolution No. 2001-56; and
 - b) City has reviewed and considered the Final EIR and finds that the Final EIR is adequate for its use as a responsible agency decision-making body for its consideration of the resolution authorizing the City Manager to enter into a Cooperative Agreement with the District; and
 - c) Approval of the resolution authorizing the City Manager to enter into a Cooperative Agreement with the District is within the scope of the activities evaluated in the Final EIR in that City's support of the District's repair activities to creek banks as a part of the District's ongoing SMP is covered in the Final EIR, and the proposed resolution authorizing the City Manager to enter into a Cooperative Agreement with the District is consistent with the SMP Project as described in the Final EIR and Resolution No, 2001-56; and
 - d) Since the Final EIR was finalized, there have been no substantial changes to the SMP Project and no substantial changes in SMP Project circumstances that would require major revisions to the Final EIR due to the involvement of new significant environmental effects or an increase in

the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR; and

- e) City has not identified any feasible alternative or additional feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect that the SMP Project would have on the environment; and

2. Therefore, based upon all of the foregoing, City hereby adopts said findings within Resolution No. 2001-56 as a responsible agency under CEQA to the fullest possible extent that said findings are relevant to City's decision to approve a resolution authorizing the City Manager to enter into a Cooperative Agreement with the District.

BE IT FURTHER RESOLVED that the Director of Planning is hereby directed to prepare a Notice of Determination under CEQA and cause the same to be filed with the County Clerk of the County of Santa Clara promptly following the City Council's approval action on the resolution authorizing the City Manager to enter into a Cooperative Agreement with the District.

ADOPTED this 23rd day of June, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk